

APPEAL NO. 041358
FILED JULY 27, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 5, 2004. The hearing officer determined that: (1) the appellant (carrier) waived its right to contest the respondent's (claimant) entitlement to supplemental income benefits (SIBs) for the third quarter by failing to timely request a benefit review conference (BRC); and, (2) that the claimant is entitled to third quarter SIBs because the carrier waived its right to contest the claimant's entitlement to SIBs. The carrier appealed the hearing officer's determinations, arguing that it timely filed a request for a BRC and that the claimant is not entitled to third quarter SIBs. The appeal file does not contain a response from the claimant.

DECISION

Reversed and rendered.

We first address the waiver issue. The claimant filed her Application for [SIBs] (TWCC-52) for the third quarter with the carrier on January 29, 2004, and the carrier filed a Request for a [BRC] (TWCC-45) to dispute the claimant's entitlement to SIBs for the third quarter on February 9, 2004, a period of more than 10 days. It is undisputed that there was an active dispute regarding the claimant's entitlement to SIBs for the second quarter at the time the carrier received the claimant's TWCC-52. At issue was whether the carrier waived its right to contest the claimant's entitlement to SIBs for the third quarter by failing to timely request a BRC.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.108(e) (Rule 130.108(e)) provides that if a carrier disputes entitlement to a subsequent quarter and the carrier did not pay SIBs during the quarter immediately preceding the quarter for which the TWCC-52 is filed, the carrier shall send the determination to the claimant within 10 days of the date the TWCC-52 was filed. Section 408.147(b) provides if an insurance carrier fails to make a request for a BRC within 10 days after the date of the expiration of the impairment income benefit period or within 10 days after receipt of the employee's TWCC-52, the insurance carrier waives the right to contest entitlement to SIBs and the amount of SIBs for that period of SIBs. The hearing officer determined that the carrier did not dispute the claimant's entitlement to SIBs within the 10-day period set out in the statute and that the carrier waived its rights to dispute the claimant's entitlement to SIBs for the third quarter.

The carrier argues on appeal, that the hearing officer "failed to consider that [10] days would have fallen on February 8, 2004, a Sunday, and that February 9, as a Monday, was the first business day following a holiday." (Emphasis in the original.) Rule 102.3(a)(3) provides, in part, that due dates and time periods under this Act shall be computed as follows:

- (3) unless otherwise specified, if the last day of any period is not a working day, the period is extended to include the next day that is a working day.

Rule 102.3(b) provides that a working day is any day, Monday-Friday, other than a national holiday as defined by the Texas Government Code, Section 662.003(a) and the Friday after Thanksgiving Day, December 24th and December 26th. Use in this title of the term "day," rather than "working day" shall mean a calendar day.

In this case, the 10th day was February 8, 2004, a Sunday, and the date for filing with the Texas Workers' Compensation Commission was thus, in accordance with Rules 102.3(a)(3) and (b), on Monday, February 9, 2004. See *generally* Texas Workers' Compensation Commission Appeal No. 981078, decided June 25, 1998. The hearing officer's method of counting the days from receipt of the TWCC-52 to calculate the proper filing deadline was incorrect. Thus, we reverse the hearing officer's determination that the carrier waived the right to contest the claimant's entitlement to SIBs for the third quarter by failing to timely request a BRC, and render a new decision that the carrier did not waive the right to contest the claimant's entitlement to SIBs for the third quarter by timely filing a request for a BRC.

With regard to the SIBs issue, the hearing officer found that the claimant's unemployment was a direct result of the claimant's impairment and that the claimant did not attempt in good faith to obtain employment commensurate with the claimant's ability to work. Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Rule 130.102. At issue in this case was whether the claimant made a good faith effort to obtain employment commensurate with her ability to work pursuant to Rule 130.102(d)(5), and whether the claimant's unemployment was a direct result of her impairment. In the present case, the hearing officer found that the claimant's unemployment was a direct result of the claimant's impairment, and that the claimant did not attempt in good faith to obtain employment commensurate with the claimant's ability to work. Whether a claimant satisfied the direct result requirement for SIBs entitlement and whether the claimant satisfied the good faith requirement for SIBs entitlement were factual questions for the hearing officer to resolve.

Given that we have reversed the hearing officer's waiver determination and rendered a new decision that the carrier did not waive the right to contest the claimant's entitlement to SIBs for the third quarter by timely filing a request for a BRC, we also reverse the hearing officer's determination that the claimant is entitled to SIBs for the third quarter, and render a new determination that the claimant is not entitled to SIBs for the third quarter.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Veronica L. Ruberto
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Margaret L. Turner
Appeals Judge